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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,258	07/18/2003	Merrit Jacobs	CDS 5016	3280

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EXAMINER	
MOSS, KERI A	
ART UNIT	PAPER NUMBER
1743	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/622,258	JACOBS ET AL.	
	Examiner	Art Unit	
	Keri A. Moss	1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 January 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,8-12 and 14-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6, 8-12 and 14-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's amendment dated January 8, 2007 is hereby acknowledged. Claims 1-6, 8-12 and 14-18 are pending.

Response to Amendment

2. Previous rejections have been maintained and include new grounds for rejection under Brentz (USP 5,463,895).

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claim **1, 4-5, 10-12 and 15-18** are rejected under 35 U.S.C. 102(b) as being unpatentable over Cathcart (US 5,443,791) in view of Brentz (USP 5,463,895). Cathcart discloses a method for mixing a liquid in a container (Figs. 9A-10D part 259) comprising providing a probe (Fig. 3E part 217) having a probe tip (Fig. 3E part 33) for aspirating and dispensing the liquid in the container, providing the container (part 259) containing one or more liquids to be mixed, inserting the probe into a first location of the container, aspirating the one or more liquids into the probe, repositioning the probe or container to place the probe at a second location in the container and dispensing the one or more liquids with the probe (column 9 lines 30-39). The aspirating and dispensing may be done at one location before repositioning (column 9 lines 30-39).

The repositioning is achieved by moving the probe and may be horizontal or vertical (column 13 lines 52-61). method involves providing a sample containing an analyte, providing a first reagent, mixing the reagent, incubating the sample and reagent, adding a second reagent and mixing then analyzing the sample (column 25 line 52-column 27 line 11). The method is implemented by a computer program interfacing with a computer (column 9 lines 41-54). Cathcart also teaches an article of manufacture comprising a computer usable medium having computer readable program code configured to conduct the process of claim 1 (columns 15-17). The probe tip is moved sideways to reposition (column 13 lines 52-61) and has a flat side oriented to be perpendicular to the direction of movement of the probe tip (Fig. 3E).

Cathcart does not teach using disposable tips and disposing of them after the pipetting step. Cathcart does, however, teach a washing station. A washing station is an art-recognized equivalent to disposable pipette tips, as demonstrated by Brentz (USP 5,463,895). Brentz teaches that washing a pipette tip between each pipetting step decreases cross-contamination (column 1 lines 30-34). Brentz teaches that replacing a washing station with disposable pipette tips increases throughput in an automated instrument (column 1). Therefore, by teaching a washing step after each pipetting step and teaching the advantages of using disposable pipette tips in place of a washing step, Brentz teaches using disposable tips and disposing of them after each pipetting step. It would have been obvious for one of ordinary skill in the art to modify the the washing step of Cathcart by replacing it with the art-recognized equivalent of using disposable pipette tips in order to gain the advantages of higher throughput.

5. Claims **2-3** are rejected under 35 U.S.C. 103(a) as being unpatentable over Cathcart and Brentz, as described supra. Cathcart does not expressly teach a specific number of locations at which to aspirate and dispense for thorough mixing. However, Cathcart teaches using a helical motion to mix (column 13 lines 52-61) which would require repositioning the probe tip within the container. It would have been obvious for one of ordinary skill in the art to repeat the aspirating and dispensing step at 5 locations in a helical motion as necessary for thorough mixing.

6. Claims **6, 8-9** and **14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Cathcart and Brentz, supra, in view of Devlin (USP 7,015,042). Cathcart does not teach moving the container, nor disposable tips, nor containers that are cuvettes nor an analyte that is high density lipoprotein. Devlin teaches a method of automated clinical analysis of high density lipoprotein (Tables 1 and 2) which repositions using a moving rectangular cuvette container (Figs. 1 and 2).

Devlin teaches that an advantage to the disclosed method and associated apparatus is that several different types of analyses may be performed within the analyzer (column 4 lines 12-49). The use of cuvettes as mixing containers shortens the time between assay and analysis. Therefore, it would have been obvious to modify the method and associated apparatus of Cathcart with those of Devlin in order to gain the disclosed advantages of carrying out different assays in the same analyzer such as expanding the

utility of the analyzer and to gain the additional advantages involved with using a cuvette container such as shortening total assay and analysis time.

Response to Arguments

7. Applicant's arguments with respect to claims 1-6, 8-12 and 14-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keri A. Moss whose telephone number is 571-272-8267. The examiner can normally be reached on 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Keri A. Moss
Examiner
Art Unit 1743

KAM 4/2/07

Jill Warden
Supervisory Patent Examiner
Technology Center 1700